

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LEXINGTON INSURANCE COMPANY and
NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, P.A.,

Plaintiffs,

v.

VIRGINIA SURETY COMPANY, INC.,

Defendant.

Civil Action No. 04-11109-RGS

JOINT REPORT REGARDING FINAL AGREEMENT

Defendant Virginia Surety Company, Inc. (“VSC”) and Plaintiffs Lexington Insurance Company (“Lexington”) and National Union Fire Insurance Company of Pittsburgh, PA (“NUFIC”) (collectively, the “Parties”) respectfully submit this Joint Report Regarding Final Agreement. VSC submitted a settlement demand to Lexington and NUFIC, and Lexington and NUFIC have made a counter-proposal. VSC has responded to this counter-proposal and have requested that Lexington and NUFIC respond to this settlement offer within 14 days. If a settlement is not reached at that time, the Parties hereby request that the Court set a Status Conference at which time a date will be set for a trial on the remaining issues in this action.

The issues remaining for the Court to resolve in this matter include the following:

1. In light of the Court’s prior ruling on the parties’ cross-motions for summary judgment, the amounts which NUFIC and/or Lexington are obligated to reimburse VSC for attorneys fees, costs and settlements or judgments in connection with underlying claims that were concurrently covered under insurance policies issued by VSC and by NUFIC or Lexington.

2. Whether Lexington has valid coverage defenses to various of the underlying claims for which VSC seeks reimbursement from Lexington, and whether these defenses were timely raised and properly before the court in this lawsuit
3. Whether NUFIC and/or Lexington may avoid reimbursement to VSC of defense costs and attorneys fees incurred in connection with various underlying claims, based upon NUFIC/Lexington's allegation that VSC failed to timely tender its policy limits for settlement of said claims upon demand by NUFIC and/or Lexington, and whether these defenses were timely raised and properly before the court in this lawsuit.

Respectfully submitted,

LEXINGTON INSURANCE COMPANY
AND NATIONAL UNION FIRE
INSURANCE COMPANY OF
PITTSBURGH, P.A.,

By their attorneys,

/s/ Gerald S. Frim
Mark E. Cohen, Esq. (BBO# 089800)
Robert J. Maselek, Esq. (BBO# 564690)
Gerald S. Frim, Esq. (BBO# 656204)
The McCormack Firm, LLC
One International Place –7th Floor
Boston, MA 02110
(617) 951-2929
(617) 951-2672

Dated: February 29, 2008

VIRGINIA SURETY COMPANY, INC.,

By its attorneys,

/s/ Hemanth C. Gundavaram
Joseph G. Blute, Esq. (BBO# 047300)
Nicholas C. Cramb, Esq. (BBO# 654368)
Hemanth C. Gundavaram, Esq. (BBO# 661282)
MINTZ LEVIN COHN FERRIS
GLOVSKY & POPEO, P.C.
One Financial Center
Boston, MA 02111
(617) 542-6000
(617) 542-2241 (fax)

Dated: February 29, 2008

--	--

Certificate of Service

I, Hemanth C. Gundavaram, Esq. hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non registered participants on February 29, 2008.

/s/ Hemanth C. Gundavaram

Dated: February 29, 2008